

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

19CV11216

RORY BIALOSTOSKY, an individual in
Pro Se,

Plaintiff,

v.

TERI CUMMINGS, also known as
THERESA CUMMINGS, in her official
capacity as a West Linn City Councilor,

Defendant.

CASE NO.:

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF PURSUANT
TO ORS 192.427 & ORS 192.431

FEE AUTHORITY: ORS 21.135(1), (2)(F)
(\$265)

CLAIM NOT SUBJECT TO
MANDATORY ARBITRATION

Plaintiff alleges:

PARTIES

1.

At all times relevant to this matter, Plaintiff (hereafter "Mr. Bialostosky") has been and is currently a resident of West Linn, Oregon in Clackamas County.

2.

At all times relevant to this matter, Defendant (hereafter "Ms. Cummings") has been and is a West Linn City Councilor, duly elected by the people pursuant to ORS 221.110. This suit pertains to Ms. Cummings' acts and omissions in her official capacity as an elected

1 official.

2 JURISDICTION

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4 3.

5 Clackamas County Circuit Court has jurisdiction over this matter pursuant to ORS
6 192.427.

7 GENERAL ALLEGATIONS

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9 4.

10 Ms. Cummings is a West Linn City Councilor and began serving her current term in
11 2017. Mr. Bialostosky is a longstanding advocate for the citizens of West Linn and an active
12 participant in the local government affairs of the City of West Linn ("City"). Mr. Bialostosky
13 noticed throughout his years attending and viewing city council meetings and engaging with
14 the councilors that Ms. Cummings constantly took notes by hand, writing in notebooks. This
15 handwriting of notes by Ms. Cummings occurred during a one on one meeting between
16 Plaintiff and Defendant in 2017, during advisory group and neighborhood association
17 meetings which Ms. Cummings attended in her official capacity, and most importantly,
18 during every single city council meeting that Ms. Cummings has attended.
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21 5.

22 Under ORS Chapter 192, the chapter of the Oregon Revised Statutes which governs
23 public records, Ms. Cummings' notes and notebooks as described in Paragraph 4 are public
24 records. As a result, Mr. Bialostosky and other members of the community have a legal right
25 under ORS 192.314 to inspect these records.
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6.

On January 29th, 2019, Mr. Bialostosky submitted a public records request to the City requesting to inspect the handwritten notes and specifically the notebooks that Ms. Cummings has written in while acting as a City Councilor. The City Recorder, Kathy Mollusky, informed Mr. Bialostosky via email that the City was not the custodian of the records requested by Mr. Bialostosky, but that she had asked Ms. Cummings to bring in the notebooks to allow Mr. Bialostosky to inspect them. Ms. Cummings refused to turn her notebooks over to the City Recorder.

7.

Subsequently, after a monthlong delay and review, the City Attorney informed Mr. Bialostosky that it was not the custodian of the requested records, and that therefore its response to Mr. Bialostosky's request was complete. Thus, Ms. Cummings is established as the custodian of the notes and notebooks which she took and maintained in her official capacity.

8.

Mr. Bialostosky then turned to his only option—a request to inspect the records sought made directly to Ms. Cummings pursuant to ORS Chapter 192, also known as an inspection petition. Mr. Bialostosky sent a public records request to Ms. Cummings via email and mail on February 26th, 2019. A true and correct copy of this request, and the email accompanying it, are attached hereto as Exhibit 1.

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9.

ORS 192.418, titled “Effect of failure of Attorney General, district attorney or **elected official** to take timely action on inspection petition,” gave Ms. Cummings seven (7) days from receipt of the request to respond to Mr. Bialostosky’s inspection petition.

10.

Ms. Cummings received Mr. Bialostosky’s inspection petition on February 26th, 2019. The deadline for Ms. Cummings to respond to Mr. Bialostosky’s request for the purposes of determining whether Mr. Bialostosky could seek declaratory and injunctive relief through this action was March 5th, 2019.

11.

As of March 11th, 2019, Ms. Cummings has not taken any action on Mr. Bialostosky’s records request and has not attempted to correspond with Mr. Bialostosky regarding his records request. This constitutes a denial of the request under ORS 192.418.

12.

The records sought by Mr. Bialostosky are subject to the City General Records Retention Schedule, which governs the period of time that public records must be maintained.

13.

Mr. Bialostosky has no other plain, speedy, or adequate remedy at law other than this action.

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Pursuant to ORS 192.431(3), Mr. Bialostosky is entitled to recover its costs and disbursements and reasonable attorney's fees (if one is retained) incurred herein.

**FIRST CLAIM FOR RELIEF
(Declaratory)**

15.

Mr. Bialostosky realleges and incorporates his General Allegations herein.

16.

Pursuant to ORS 192.427 and ORS 192.431, this Court has the authority to grant declaratory relief regarding whether records in the custody of an elected official are public records under Oregon law, and whether said public record must be disclosed to the public.

17.

The records in question here, notes and notebooks taken and maintained by an elected official acting in their official capacity, are public records. As such, the records are subsequently subject to the General City Records Retention Schedule, disclosure and inspection by members of the public, including Mr. Bialostosky.

18.

Mr. Bialostosky requests that this Court issue declaratory relief in the form of a judgment declaring that the notes and notebooks in the custody of Ms. Cummings taken and maintained by Ms. Cummings in her official capacity are public records and are subject to disclosure and inspection by members of the public. Further, Mr. Bialostosky requests that

1 this Court declare that the notes and notebooks in the custody of Ms. Cummings as
2 referenced above must be produced in accordance with Oregon Public Records Law.
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5 **SECOND CLAIM FOR RELIEF**
6 **(Injunctive)**

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7 Mr. Bialostosky realleges and incorporates his General Allegations herein.
8

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10 Pursuant to ORS 192.427 and 192.431, this Court has jurisdiction to enjoin the public
11 body (or in this case, the elected official) from withholding records and to order the
12 production of any records improperly withheld from the person seeking disclosure.
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15 Mr. Bialostosky requests that this Court issue injunctive relief, enjoining Ms.
16 Cummings from withholding the notes and notebooks taken and maintained by Ms.
17 Cummings in her official capacity. Additionally, Mr. Bialostosky seeks a judgment
18 compelling Ms. Cummings to produce said records immediately to Mr. Bialostosky.
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21 **WHEREFORE**, Mr. Bialostosky prays for a judgment against Ms. Cummings as
22 follows:

23 **Pursuant to Mr. Bialostosky's first claim for declaratory relief, a judgment:**
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25 a. Declaring that the notes and notebooks in the custody of Ms. Cummings taken
26 and maintained by Ms. Cummings in her official capacity are public records and are subject

1 to the City General Records Retention Schedule, disclosure and inspection by members of
2 the public including Mr. Bialostosky.

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4 b. Declaring that the notes and notebooks in the custody of Ms. Cummings taken
5 and maintained by Ms. Cummings in her official capacity must be produced in accordance
6 with Oregon Public Records Law.

7 **Pursuant to Mr. Bialostosky's second claim for injunctive relief, a judgment:**

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9 a. Enjoining Ms. Cummings from withholding the notes and notebooks taken
10 and maintained by Ms. Cummings in her official capacity from inspection by Mr.
11 Bialostosky and other members of the public.

12 b. Compelling Ms. Cummings to produce to Mr. Bialostosky for inspection by
13 Mr. Bialostosky her notes and notebooks taken and maintained by Ms. Cummings in her
14 official capacity.
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16 **Pursuant to both of Mr. Bialostosky's claims, a judgment:**

17 a. Awarding Mr. Bialostosky costs, disbursements incurred herein and attorney's
18 fees if an attorney is retained.

19
20 b. Awarding to Mr. Bialostosky any other relief that this Court may deem just
21 and equitable.

22 Respectfully submitted,

23 

24 RORY BIALOSTOSKY
25 Plaintiff, Pro Se
26 roryforstudents@gmail.com
(503)577-3837

DATED this 11 day of March, 2019.

PUBLIC RECORDS REQUEST

February 26, 2019
City Councilor Teri Cummings
West Linn City Hall
22500 Salamo Road
West Linn, OR 97068

VIA CITY EMAIL AND MAIL

Dear Councilor Cummings,

Pursuant to Oregon Public Records Laws, ORS 192.311 to 192.505, I, Rory Bialostosky, along with David Baker, write to request to inspect a true original of all notebooks used and/or written in during the course of your work as a West Linn City Councilor at West Linn City Hall in a room free from obstruction or interference.


ORS Chapter 192 defines a public record in ORS 192.311 as "any writing that contains information relating to the conduct of the public's business." The legislature went on further to define the term "Writing" to mean "handwriting. This means that, according to ORS 192.311, a City Councilor's notebook in which they handwrite comments or notes during a public meeting or notes in preparation for a public meeting or notes pertaining to the City Councilor's job as an elected official, whether it be at advisory group meetings, neighborhood association meetings, meetings with constituents, or any other situation in which notes were taken during the conduct of your business as a city councilor are subject to inspection and copying via a public records request.

I am not requesting to make any copies of the requested records at this time. If I end up copying any records, I agree to pay the cost associated with copying.

If you choose to deny my request, please provide a written explanation for the denial including a reference to the specific statutory exemption(s) upon which you rely.

Please understand that we seek these records for the purposes of public interest, and we hope that the spirit of openness in Oregon government will prevail.

Thank you for your assistance with this matter,



Rory Bialostosky



Rory Bialostosky <roryforstudents@gmail.com>

Public Records Request - 2/26/19

Rory Bialostosky <roryforstudents@gmail.com>
To: "Cummings, Teri" <TCummings@westlinnoregon.gov>

Tue, Feb 26, 2019 at 7:21 PM

Dear Councilor Cummings,

Pursuant to ORS 192.311 to ORS 192.501, please see the attached letter constituting a public records request for records that are in your custody. You have 7 days to reply to this request per ORS 192.418. I've mailed a copy of this letter to your city hall address as well.

Thank you for your attention to this matter,
Rory Bialostosky

 **Records Request to Cummings 2-26-19.pdf**
64K

EXHIBIT 1
Page 2 of 2